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INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

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Item 12 of the provisional agenda: International consultation and coordination: report on the impact of Article 21 of the Convention

At its fourth ordinary session (June 2013), the Conference of Parties requested the Committee to debate and analyse the information on the implementation of Article 21 and to report on the impact of its implementation to the fifth ordinary session (Resolution 4.CP 11). The first report on the impact of Article 21 of the Convention is annexed hereto.

Decision required: paragraph 14

1. Article 21 – “International consultation and coordination” – forms part of Section V of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter “the Convention”) on the latter’s relationship to other instruments. It requires Parties to promote the objectives and principles of the Convention. For this purpose, in addition to their own actions and initiatives, the Parties may, if necessary, engage in consultations on this issue in the interests of the Convention.
2. In conjunction with Article 21, Article 23.6 (e) also provides for consultation aimed at promoting the objectives and principles of the Convention within other international forums. Since Article 23.6 (e) relates to the functions that the Convention confers upon the Committee, the latter may, if it so wishes, establish procedures and other mechanisms for consultation aimed at further promotion in other international forums.
3. Pursuant to Resolution 3.CP 11 of the Conference of Parties¹ and Decision 5.IGC 8 of the Committee, the Secretariat engaged in *consultations with the Parties to the Convention in 2011 and 2012* regarding implementation of Article 21. In both years the Secretariat sent the Parties a letter (on 29 July 2011 and 12 April 2012) accompanied by a questionnaire, asking them to provide information on the steps they had taken to implement Article 21.²
4. Thirty-six Parties (36) replied to the Secretariat in 2011³ and 16 in 2012,⁴ thus bringing to 38 the total number of Parties taking part in the consultations over the two years. They were also asked to provide the Secretariat with information in 2013 using the online platform for Article 21.
5. The *results and analysis* of these consultations were presented to the Committee at its fifth and sixth ordinary sessions in December 2011 and 2012 (Document CE/11/5.IGC/213/8REV2 and Document CE/12/6.IGC/11) and to the Conference of Parties at its fourth session in June 2013 (Document CE/13/4.CP/11). Analysis of the first consultation already showed that Parties were interpreting the concept of “international forums” very broadly. Overall, analysis indicated that the Parties were using and invoking the Convention in order, for example, to:
 - intervene in international forums, whether or not these had cultural objectives;;
 - strongly assert the Convention’s objectives and principles in culture and trade agreements;
 - consult with other Parties with a view to signing new bilateral agreements reflecting the Convention’s objectives and principles;
 - engage in dialogue with States not party to the Convention to encourage ratification.

¹ At its third ordinary session, the Conference of Parties to the Convention requested “the Secretariat to present, in relation to Article 21, a compendium of cases wherein the Convention is invoked or utilized in other international fora for examination by the Committee at each ordinary session” (Resolution 3.CP 11).

² The questionnaire was divided into three parts. In the first, Parties were asked whether they had ever invoked or used the Convention in other international forums and, if so, to describe the circumstances and the results. The second part of the questionnaire asked the Parties whether they had engaged in consultations with other Parties to the Convention to promote its objectives and principles in international forums other than UNESCO and, if so, to describe their response. Lastly, in the third part, Parties were asked to suggest other ways in which the Convention could be used or invoked in international forums in order to promote its objectives and principles.

³ Parties completing the questionnaire in 2011: Argentina, Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Brazil, Cameroon, Canada, China, Congo, Cuba, Ecuador, Egypt, Guatemala, Jordan, Madagascar, Malawi, Mauritius, Mexico, Namibia and Viet Nam, as well as the European Union and its following Member States: Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Italy, Latvia, Portugal, Romania, Slovakia and Slovenia.

⁴ Parties completing the questionnaire in 2012: Argentina, Australia, Canada, China, Costa Rica, Ecuador, Egypt and Jordan, as well as the European Union and its following member states: Cyprus, France, Greece, Italy, Latvia, Netherlands and Portugal.

6. The results of the second consultation confirmed those of the first, with Parties providing additional information, in particular references to examples of the Convention being included in culture and trade agreements, whether bilateral, regional or multilateral. It was also found that the Convention was increasingly taken into account in discussions on the link between culture and development and was referenced in related declarations and resolutions adopted at international meetings.
7. Since the Parties indicated in the first consultation that they had high expectations that relevant information on Article 21 would be provided in the quadrennial periodic reports the Secretariat undertook a screening of all reports submitted in 2012 and 2013 to complement the information provided in the consultations and hence forming the basis of its analysis.⁵
8. The two consultations also made it possible to collect numerous documents from the Parties and to compile a list containing a large number of events where the Convention was promoted. The Parties had been informed that these documents would constitute important sources for an inventory of experiences and practices on implementing Article 21. The inventory has been available on the Convention's website since November 2012 at the following address: <http://www.unesco.org/culture/cultural-diversity/2005convention/>. It offers information on how Parties have consulted each other in other international forums in order to promote the Convention and contains specific examples of the implementation of Article 21. To assist Parties in supplying information, the Secretariat created two online submission forms that Parties can complete at their own convenience.⁶ These forms are not just designed for the Parties; they can also be completed by representatives of civil society or international organizations. In fact, at its fourth ordinary session in June 2013 the Conference of Parties invited civil society and international organizations to use the online platform to bring to the attention of the Secretariat all relevant information concerning the implementation of Article 21 (Resolution 4.CP 11).
9. As of 10 October 2013, the inventory contained 62 references, consisting of 39 documents and 23 events, most of which could be downloaded in English, French and Spanish. Documents are organised in the following categories: international agreements, declarations/resolutions, speeches/addresses and academic literature/research. Events are classified according to ministerial meetings, international/regional/national meetings and seminars/conferences.
10. The *Committee's debates* on the implementation of Article 21 at its last two sessions in 2011 and 2012 covered most of the issues highlighted in the Secretariat's analysis (see detailed summary record of the Committee's fifth ordinary session, document CE/12/6.IGC/3, paragraphs 137 to 157, and detailed draft summary record of the Committee's sixth ordinary session, paragraphs 239 to 249).⁷
11. The *debate by the Conference of Parties* at its fourth ordinary session emphasized the importance of Article 21 and the necessity to monitor its implementation, particularly within the context of the growing number of bilateral trade agreements. Discussions during this session also covered new challenges posed to the implementation of Article 21 in the digital

⁵ For example, Canada, Italy, Peru, Serbia, Slovakia and the European Union included information relevant to implementation of this article in their reports.

⁶ One form is for submitting documents relevant to the implementation of Article 21, while the other is for submitting information on events at which the Convention was either the focus of debate or one of the main subjects discussed.

⁷ It should be noted that, at the Committee's fifth ordinary session, during its discussion of this issue, one observer not party to the Convention expressed concern that Article 21 might be misused to prevent activities in fields other than culture, such as trade and industry, which could work against the objectives and principles of the Convention. The Secretariat then pointed out that the consultation was simply an exercise to collect information from Parties and to present the results in a factual manner and that the Committee had merely taken note of the information provided. The Legal Advisor further observed that nothing in the working document was outside UNESCO's area of competence. He also maintained that the analysis by the Secretariat fulfilled the mandate given by the Conference of Parties to the Committee.

age. The Conference of Parties congratulated the Secretariat on all the work that it had done in connection with Article 21 and especially its work on the inventory of cases in which the Convention had been used or invoked in other international forums.

12. At this fourth ordinary session, the Conference of Parties requested the Secretariat to actively continue its work on developing the database by sending a biennial invitation to Parties to fill in the online questionnaire (Resolution 4.CP 11). The Secretariat will therefore consult the Parties in 2014. The Committee was further requested to debate and analyse the information on the implementation of Article 21 and report to the fifth ordinary session of the Conference of Parties on the impact of its implementation. The first report on preliminary findings on the impact of this article is presented in the annex to this document.
13. On the basis of this report, the Committee is invited at this session to examine the report in Annex debate and analyse the information provided and determine a workplan of priorities for 2014.
14. The Committee may wish to adopt the following decision:

DRAFT DECISION 7.IGC 12

The Committee,

1. *Having examined document CE/13/7.IGC/12 and its Annex;*
2. *Recalling Resolutions 3.CP 11 and 4.CP 11 of the Conference of Parties and its Decisions 5.IGC 8 and 6.IGC 11;*
3. *Takes note of the preliminary information gathered on the impact of Article 21 of the Convention that is presented in this e above-mentioned document and its Annex;*
4. *Invites the Parties, civil society and international organizations to use the online platform to continue to bring to the attention of the Secretariat all relevant information concerning the implementation of Article 21 of the Convention and its impact;*
5. *Requests the Secretariat to actively continue its work to collect and analyze information on the implementation and impact of Article 21 through a biennial invitation to Parties to fill in the online questionnaires and to further develop the online platform and database;*
6. *Requests Parties to support the Secretariat's work, including the online platform, by providing extrabudgetary resources.*

ANNEX

First report on the impact of the implementation of Article 21 of the Convention

This report is the first in a series aiming to analyse the impact of implementation of Article 21 of the Convention, which invites Parties to promote the objectives and principles of the Convention in other international forums.

It should be noted that the Parties have taken a very broad interpretation of international forums, which embraces regional and multilateral forums run by intergovernmental and non-governmental organizations both within and outside the cultural sphere. Organizations mentioned by Parties in their replies include:

- **International organizations:** United Nations, World Trade Organization (WTO), World Intellectual Property Organization (WIPO);
- **Regional economic organizations:** Association of South-East Asian Nations (ASEAN), the European Union and its institutions, Mercosur, Andean Community of Nations, Organization of the Black Sea Economic Cooperation;
- **Intergovernmental organizations:** Asia-Europe Meeting (ASEM), Commonwealth of Independent States, Council of Europe, Organisation for Economic Co-operation and Development (OECD), Organization of American States (OAS), Organization of Ibero-American States for Education, Science and Culture, International Organisation of the Francophonie (OIF), Union of South American Nations (UNASUR), Bolivarian Alliance for the Peoples of Our America (ALBA), Southern African Development Community;
- **Regional and international government institutions and networks:** Central American Educational and Cultural Coordination, International Network on Cultural Policy (INCP), Regional Centre for Book Development in Latin America and the Caribbean;
- **International non-governmental organizations:** International Council of Museums, International Federation of Coalitions for Cultural Diversity (IFCCD), International Federation of Musicians (FIM), International Network for Cultural Diversity (INCD), International Federation of Arts Councils and Culture Agencies (IFACCA), International Publishers Association, Anna Lindh Foundation.

Because the interpretation is so broad, the implementation of Article 21 of the Convention has been promoted in a large number of forums worldwide.

There are several challenges to determine the impact of Article 21. The first challenge is the lack of benchmarks available to evaluate the impact of this Article coupled with the current lack of evidence required to monitor impact given the short amount of time that this Article has been implemented.

The second challenge is to determine the best approach to adopt in order to evaluate the impact of initiatives taken by the Parties to implement Article 21. Using a results-based monitoring and evaluation framework, the Secretariat has begun to examine the impact of activities and actions taken by Parties to implement Article 21 using the results chain that defines results as:

- outputs: which are the results of Parties' activities, for example, adoption of a declaration to raise awareness of the Convention or promote its ratification;
- outcomes: which are the expected results of outputs, for example, a decision, a change in attitude, an increase in investment, or change of institutional policies;

- impact: resulting in a change in conditions, for example, at the institutional, cultural, economic or governance level.

This first report is based on the information provided by Parties through the consultation launched by the Secretariat in 2011 and 2012. . It also draws upon information provided in the quadrennial periodic reports submitted by Parties in 2012 and 2013 regarding ways and means of implementing Article 21 in order to promote the Convention in other international forums. This examination has led the Secretariat to focus on three fields of action: international cultural cooperation, international trade agreements, and the link between culture and development.

1. Implementation of Article 21 of the Convention in the field of international cultural cooperation

The results of the consultations demonstrate that a number of Parties had signed cultural agreements and memoranda of understanding as well as various instruments such as declarations, partnerships and programmes over the past few years and that put the Convention's principles and objectives into effect. Adoption of these instruments can be regarded as an output leading to outcomes, such as greater investment through new programmes and projects. Longer term impact cannot be assessed at this stage.

Multilateral cooperation

A large number of *declarations* have been adopted by the Parties at the multilateral level, thus helping to bolster international cultural cooperation. Among these outputs, mention may be made of the **Brussels Resolution**, adopted in October 2012, in which the Ministers of Culture of the African, Caribbean and Pacific (ACP) Group of States reaffirmed the Parties' commitments under the Convention and urged Member States that had not yet done so to ratify the latter. They also pledged to facilitate the sharing of information, mobility of culture-sector professionals and the flow of cultural goods and services from ACP countries to regional and international markets.⁸

Subsequent to adoption of this declaration, the observed outcome has been increased investment, since the Secretariat of the ACP Group, with European Union funding under the Tenth European Development Fund (EDF), has allocated 30 million euros to the ACPCultures+ Programme.⁹ This programme specifically aims to bolster creation and production of cultural goods and services in ACP States, supports increased access to local, regional, intra-ACP, European and international markets for cultural goods and services from ACP States and promotes capacity-building for culture-sector professionals in ACP States.¹⁰ The ACPCultures+ Programme is currently funding 20 projects selected after the first call for proposals: 11 film and audiovisual projects, receiving 3,974 million euros, and 9 projects spread over other sectors of the cultural industries, receiving 4,279 million euros.

Still in the field of multilateral declarations, another output is the **Montreux Declaration**, adopted at the close of the Thirteenth Summit of La Francophonie (2010), in particular article 36. In this article, the signatory States urge ratification and implementation of the Convention as well as requesting operators and the International Organisation of La Francophonie (IOF) to provide more support to French-speaking countries in the South that are developing national cultural policies and promoting the emergence of cultural industries on their territories.

⁸ See § 26 of the Brussels Resolution, in which the ACP Ministers of Culture “pledge to ease conditions, including visa facilities, for the circulation of artists, culture professionals and cultural products, in order to increase their mobility and improve access of their cultural products and services to regional and international markets”.

⁹ See, among other sources, <http://www.acpculturesplus.eu>, ACP Cultures+ Programme, Secretariat of the ACP Group of States, “No Future without Culture”, March-April 2013.

¹⁰ The ACPCultures+ Programme is implemented through calls for proposals, leading to allocation of grants to selected operators in all areas of the culture sector, including cultural industries and policies.

Following adoption of this declaration, the IOF established various projects and programmes¹¹ that constitute outcomes, such as increased investment and introduction of institutional policies. Regarding support for dissemination of musical works by performers in countries of the South, mention may be made of the programme launched by the IOF and Institut Français called “Equation Musique”, which allows professional bodies in Africa to meet their counterparts in other countries, publicize their activities and to circulate their musical works on the international level. Thus three performers took part in a European tour in June 2011: the Ghanaian Wanlov the Kubolor with his Afrogypsy music, the Kenyan Winyo, an acoustic folk artist, and the Haitian Bélo with “ragganga”. These three artists performed in five European venues.

In 2012, in the wake of the Montreux Declaration, the **Kinshasa Declaration** was adopted at the close of the Fourteenth Summit of La Francophonie. Article 52 reiterates the determination of the heads of State and government of countries using French as a common language to “continue developing [their] cultural industries and policies in the spirit of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and incorporate culture in [their] development policies in order to create favourable conditions for sustainable development”. Outcomes of this Declaration will become evident in the future as it is implemented on the ground. .

Adopted in February 2011 at the close of the Inter-Parliamentary Conference on the Diversity of Cultural Expressions, the **Quebec Declaration**, in paragraph 24.3, requests all heads of State and government “to bring the whole weight of the Convention to bear in commercial negotiations in order to defend their rights and establish or maintain policies and measures in support of cultural expressions”. Following the adoption of this declaration, which was an output, the Education, Communication and Cultural Affairs Committee (CECAC) of the International Assembly of French-speaking Parliamentarians (APF) introduced a wide-ranging action plan in July 2011 aimed at fulfilling all the commitments made.¹² This action plan is designed to promote and enforce the Convention in the French-speaking world. It includes development of training seminars for French-speaking parliamentarians. One observed outcome of this action plan was the organization by the IOF, in partnership with the APF, of two briefing seminars, one in Gabon in 2012 and the other in Burkina Faso in 2013, with the purpose of building parliamentarians’ capacity to initiate and develop public policy and strategies for developing the cultural industries.

Article 21 was applied with the adoption in 2012 of the **Dhaka Ministerial Declaration** on the Convention, which recommends that States in the Asia-Pacific region that are not yet parties to the Convention should ratify it as soon as possible. The Declaration also invites States to “facilitate dialogue among people and States on cultural policies promoting and protecting the diversity of cultural expressions” and to “foster co-production and co-distribution agreements among States, as well as facilitate market access for co-productions”. This declaration is an output intended to raise awareness and promote the Convention in order to increase the number of ratifications in the Asia-Pacific region. Although pledges to ratify the Convention were made during the meeting, particularly by the Pacific islands, it remains to be seen whether the Declaration leads to more ratifications in the region and thus to an outcome. Since adoption of the Declaration in 2012 there have been no ratifications by countries in the region.

Regional and bilateral cooperation

Article 21 has also been put into effect through regional and bilateral cultural agreements and memoranda of understanding, declarations, partnerships and programmes. When a reference to the Convention is included in these instruments, it may be noted that one output is the organization of various cultural events. As for outcomes, there have been investments made including the establishment of a fund and programmes of exchange of artists and culture-sector professionals, which has helped to bolster international cultural cooperation.

¹¹ For all these programmes, see International Organisation of La Francophonie, *Rapport du Secrétaire général de la Francophonie, De Montreux à Kinshasa* [‘Report by IOF Secretary General: From Montreux to Kinshasa’], 2012, available online (French only): http://www.francophonie.org/IMG/pdf/rapport_sg_2010-2012.pdf

¹² Resolution on follow-up to the Quebec Declaration, Kinshasa (Democratic Republic of the Congo), 5-8 July 2011.

A number of examples of *bilateral cultural agreements* and *memoranda of understanding* were reported on by the Parties. For example, over the 2008-2011 period, **Slovakia** signed a number of agreements and memoranda of understanding with Parties to the Convention (such as Armenia, former Yugoslav Republic of Macedonia, Georgia, India, the Syrian Arab Republic and Ukraine).¹³ The main purpose of these agreements was to create the legal frameworks needed to support the mobility of artists and culture-sector professionals abroad and to provide them with greater market access for distribution of cultural goods and services. An important issue for Slovakia when signing these bilateral cooperation agreements was the insertion of a reference to the Convention. The signing of such agreements has facilitated international cooperation with partner countries. These various measures have led to the organisation of international music and theatre festivals, creative poetry workshops, exhibitions and literary seminars.

In addition to bilateral cultural agreements, mention may also be made of the *declarations and partnerships* adopted by Parties and some of the initiatives they have taken subsequently. For example, in the Joint Declaration signed in October 2007 by the **European Commission (EC)** and **China**, both parties agreed to promote existing instruments in the field of culture, with the Convention being specifically named.¹⁴ This declaration was followed by a high-level cultural forum between the two parties,¹⁵ which took place in Brussels in October 2010. This forum was an unparalleled platform for exchange between influential Chinese and European researchers.¹⁶ Ten EU-China projects were funded as a special action under the Culture Programme.¹⁷ The **European Commission** has signed other joint declarations with Parties to the Convention, such as the one with **Mexico** in 2009.¹⁸ In this declaration, both recognized the vital contribution of international cultural cooperation and stated their intention to establish a policy dialogue on culture, focusing principally on cultural diversity and implementation of the Convention. This declaration was followed by the official launch of an EU-Mexico Cultural Fund with a total budget of 6.8 million euros, financed in equal measure by the EU and the Mexican Government. This can be regarded as an outcome, since there has been an increase in investment. Following the success of the first pilot phase of the EU-Mexico Cultural Fund,¹⁹ the second phase of the programme (2009-2013) is intended to promote cultural cooperation and the strengthening of Mexican cultural institutions.

¹³ Slovakia, *Quadrennial periodic report on measures to protect and promote the diversity of cultural expressions in the framework of the 2005 UNESCO Convention*, March 2012, p. 14.

¹⁴ European Commission, *Quadrennial periodic report on behalf of the European Union on measures to protect and promote the diversity of cultural expressions in the framework of the 2005 UNESCO Convention, accompanying the document Report from the Commission on measures to protect and promote the diversity of cultural expressions in the framework of the 2005 UNESCO Convention {C(2012) 3186 final}*, Brussels, May 2013, Commission staff working document, SWD(2012) 129 final, p. 60.

¹⁵ At the twelfth EU-China Summit in Nanjing in November 2009, the Prime Minister Wen Jiabao and the Commission President José Manuel Barroso took the decision to hold an EU-China cultural forum.

¹⁶ For further details, see http://ec.europa.eu/culture/our-policy-development/culture-and-external-relations/high-level-cultural-forum_en.htm

¹⁷ Among these projects, mention may be made of *Creating Spaces: Art Bridge between EU and China*, a multidisciplinary project including graphic arts and the performing arts and bringing together partners in Estonia, Finland and Sweden with a Chinese partner, as well as the *China moves – coop Europa* project, a performing arts show put on by a German partner with organizations from China, the Netherlands, Norway and Spain. To follow up the 2007 Joint Declaration and strengthen cooperation in the cultural field, European and Chinese leaders proclaimed 2012 the EU-China Year of Intercultural Dialogue. One important result of this event was the adoption of a new *Joint Declaration on EU-China Cultural Cooperation* in November 2012, in which both parties again confirmed the importance of the Convention's principles in their future cooperation projects. For further details, see http://ec.europa.eu/culture/eu-china/about/index_en.htm

¹⁸ European Commission, 'European Commission and Government of Mexico launch policy dialogue in education and culture', press release, Brussels, 11 June 2009.

¹⁹ The first pilot phase of the EU-Mexico Cultural Fund (2008-2010) as an instrument of bilateral cultural cooperation began in December 2007 with a budget of 1 million euros. This phase offered fresh scope for cultural exchanges benefiting organizations established in the European Union and cultural organizations in Mexico. Between 2008 and 2010, this instrument provided support for exchange between artists at six cultural festivals in Mexico and allowed the creation of forums for discussion of both sides' cultural industries and policies.

With regard to the signing of partnerships, mention may be made of the 2009 **Eastern Partnership (EaP)** between EU Member States and countries in Eastern Europe and the Caucasus.²⁰ This partnership consists of four platforms, Platform 4 being “Contacts between People”. Over the 2012-2013 period, the EaP parties have endeavoured to highlight the importance of cultural investment for social and economic development. They have also encouraged ratification of the Convention. One outcome of the Partnership, in the form of a decision, has been the fact that all partner countries have ratified the Convention. The Convention’s objectives and principles have also been promoted through the Eastern Partnership Culture Programme, set up for a four-year period (2011-2015) with a budget of 12 million euros.²¹ Various events, including conferences and seminars, have been organized in connection with the programme, and a number of projects were launched in early 2012, including Directors Across Borders (DAB). The latter presented the Films across Borders film programme as part of the Tenth Jubilee Golden Apricot International Film Festival in July 2013: ten films from Eastern Partnership members and Turkey were screened in Moscow cinemas.²²

2. Implementation of Article 21 of the Convention in the field of trade

Outputs and outcomes for the implementation of Article 21 have been produced in the fields of culture and trade agreements and existing case-law in trade bodies.

Culture and trade agreements

Consultations with the Parties revealed that several have included references to the Convention in bilateral cultural and trade agreements. Since adoption of the Convention in 2005, Parties include a reference to its principles and objectives in the preamble of such agreements. These agreements may be seen analyzed as outputs that promote awareness of the Convention in commercial frameworks, such as the bilateral agreements signed by Canada, the latest one signed with the European Union in 2013²³.

In addition to references to the Convention in the preamble of such agreements, Parties have used different legal tools in bilateral treaties such as cultural exemption clauses, cultural reservations and cultural protocols. As regards the use of *cultural exemption clauses*, all bilateral and regional trade agreements signed by Canada contain such clauses. With regards to *cultural reservations* Peru signed a trade agreement on the 12 April 2006 with the United States (United States of America-Peru Trade Promotion Agreement), which is now used as a template for all other bilateral and multilateral agreements.²⁴ When signing its Free Trade Agreement with the United States,²⁵ the Republic of Korea also inserted cultural reservations relating in particular to the audiovisual services sector.²⁶

²⁰ The EaP then covered the 27 EU member states and the following partner countries in Eastern Europe and the Caucasus: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. It is a discussion forum for the fields of education, research, youth, culture, the media and information. See the European Union’s periodic report, p. 23.

²¹ This programme is specifically designed to support partners’ cultural policy reforms at government level, assist in capacity building and improve the professionalism of cultural operators throughout the region. For further information see <http://www.euroeastculture.eu>

²² This festival is one of the DAB projects funded by the European Union through the Eastern Partnership Culture Programme and organized by the Golden Apricot Fund for Cinema Development in Armenia and its partners.

²³ See *Technical Summary of Final Negotiated Outcomes Canada-European Union Comprehensive Economic and Trade Agreement*, 26 pages, available online: <http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CDQQFjAA&url=http%3A%2F%2Fwww.actionplan.gc.ca%2Fsites%2Fdefault%2Ffiles%2Fpdfs%2Fceta-technicalsummary.pdf&ei=feOJUorfDoaZtAbmvYHACw&usg=AFQjCNEizMZ6oVZVOpDgDbmE-wljvsZyRw>

²⁴ Other freetrade agreements also contain cultural reservations: for example, Free Trade Agreement between Australia and the United States (2005) and Free Trade Agreement between the United States and Morocco (2006).

²⁵ Free Trade Agreement (FTA) between the United States of America and the Republic of Korea (2007), which entered into force on 15 March 2012.

²⁶ See Annex I of the Agreement, Formatting Note, Korea Annex I, available online: http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file406_12747.pdf

A new approach was introduced through the conclusion of freetrade agreements between the EU and other Parties to the Convention: namely, a *cultural protocol*. This is an outcome result of the implementation of Article 21 that has resulted in a change in practice and introduction of new institutional policies. Various examples may be mentioned, including the EU's economic partnership agreements with CARIFORUM in December 2007 and the Republic of Korea in October 2009, containing a cultural protocol. These protocols provide an innovative cooperation framework based on the Convention's objectives and principles for the purpose, among other things, of opening up market access and facilitating trade in cultural goods and services and mobility of artists and culture-sector professionals. The next step in determining the longer term impact of these cultural protocols is to collect information and data on, for example, whether there have been any changes / improvements in the conditions promoting the mobility of culture-sector professionals and artists (e.g. easier access to visas).

Along with cultural-trade agreements, we can observe that the Judicial and Legal Affairs have considered the Convention in their judgment.

Case-law and legal cases

Reference to the Convention in legal judgments can also be observed.

To date, the Convention has been invoked in *two court cases*: one at the World Trade Organization (WTO)²⁷ and the other at the Court of Justice of the European Union.²⁸ These two cases bear witness to the dual nature of cultural goods and services.

As regards the case heard at the WTO, China, in the prior consultations, cited the Convention to justify one of its measures concerning audiovisual services.²⁹ However, the Convention is not mentioned in the legal analysis of either the panel or the appellate body. The panel nevertheless recognized the unique nature of cultural goods.³⁰ This case leads to two remarks: it is a step forward by comparison with the previous case concerning cultural goods and services (the periodicals case³¹), in which the WTO panel and appellate body focused solely on the latter's commercial value; and it is the first time in WTO case-law since the adoption of the Convention that the non-commercial value of audiovisual services has been underlined by the WTO's dispute settlement body.

In the Court of Justice of the European Union, the Convention was taken into account for the first time in 2009 in a UTECA judgment, according to which the objective pursued by a Member State of promoting a language was sufficient in itself and need not be accompanied by other cultural criteria in order for it to justify a restriction on one of the fundamental freedoms guaranteed by the Treaty.³² The EU court grounded its argument on the intrinsic link between language and culture, citing the Convention, whose preamble states that "linguistic diversity is a fundamental element of cultural diversity". This judgment by the Court of Justice of the European Union implements the Convention in different ways. First, the fact that the EU and its Member States are Parties to the Convention means that their commitment to take account of the Convention is reflected in the interpretation and enforcement of other treaties, particularly the Treaty on the Functioning of the

²⁷ World Trade Organization (WTO) -Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products, WT/DS363/R, 12 August 2009, and WT/DS363/AB/R, 21 December 2009.

²⁸ Court of Justice of the European Union - Unión de Televisiones Comerciales Asociadas (UTECA) case, C-222/07, 5 March 2009.

²⁹ WTO, Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products, WT/DS363/R, 12 August 2009, § 4.108.

³⁰ WTO, Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products, WT/DS363/R, 12 August 2009, § 7.751: "[...] reading materials and finished audiovisual products are so-called 'cultural goods'" and are "products of a unique kind".

³¹ WTO, Certain Measures concerning Periodicals, WT/DS31/R, 14 March 1997, and WT/DS31/AB/R, 30 June 1997.

³² Court of Justice of the European Union - Unión de Televisiones Comerciales Asociadas (UTECA) (C-222/07, 5 March 2009), § 33.

European Union (TFEU). Secondly, consideration of the Convention in this court case for the first time demonstrates the commitments that have been entered into and means that the EU court will henceforth have to take into account cultural aspects when Member State measures contravene one of the fundamental freedoms guaranteed by the Treaty.

The quadrennial periodic reports submitted by Parties in 2012 and 2013 have also cited *legal* cases in which the Convention was used to support the legality of measures relating to cultural goods and services in the field of competition.³³ These cases concern aid granted by EU Member States to their cultural industries. For example, regarding the film industry:

- Austria adopted the “Austrian film support scheme” (2010-2012) as a national measure whose main purpose was to support the production of feature films and documentaries with Austrian and European cultural content. This measure was approved by the European Commission on the basis of EU law³⁴ and the Convention;³⁵
- Italy established the Lazio regional film support scheme in order to support production of films and audiovisual works that could contribute significantly to the development of cultural resources and particularly of the regional identity of the Lazio region.³⁶ The Commission stated that the promotion of culture and diversity of cultural expressions was supported by both the TFEU and the Convention and concluded that the measure was compatible with the TFEU;³⁷
- Lithuania, for its part, has introduced a film tax incentive scheme (2013-2018) with the object of creating favourable conditions for film production in Lithuania and attracting film producers to that country. The Commission again relied on the Convention and EU law in finding this measure compatible.³⁸

Taking EU law and the Convention as its basis, the European Commission has approved the compatibility of Member States’ measures in other cultural sectors, such as publishing, video games and music. For example, Spain has introduced publishing aid for literature in the Basque country, the main purpose of which is to offer an incentive for the production of literary publications in the Basque (Euskera) and Spanish (Castilian) languages and to support the creation, translation and adaptation of novels, poetry, plays, essays and children’s books.³⁹ Spain also provides State aid to dance, music and poetry, which was approved by the Commission pursuant to the TFEU and the Convention.⁴⁰ France has adopted a scheme to assist new media (2011-2016)⁴¹ whose main objectives are to promote French and European cultural production for new networks and digital distribution media on the one hand, and to foster cultural diversity in these media on the other.

³³ Case C 47/2006 (ex N 648/2005)- France, Tax credit for the creation of video games; Case E 4/2008: Sweden, State aid to the press.

³⁴ TFEU, Article 167(4) (“The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures”); 2001 Cinema Communication, which lays down special rules for films and audiovisual works (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the follow-up to the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works (Cinema communication) of 26 September 2001 (published in OJ C 43 on 16/2/2002). The Communication was extended in 2009 (OJ C 31/1 of 7/2/09) until 31 December 2012).

³⁵ Case N 96/2010- Austria, Austrian film support scheme.

³⁶ Case SA.34030 (2012/N)- Italy, Lazio regional film support scheme.

³⁷ See Case SA.34030 (2012/N)- Italy, Lazio regional film support scheme, § 28.

³⁸ See Case SA.35227 (2012/N)- Lithuania, Lithuanian film tax incentive, § 40.

³⁹ See Case SA.34168 (2012/N)- Spain, Publishing aid for literature in the Basque country, amendment, § 28.

⁴⁰ Case SA.32144 (N 2011)- Spain, State aid to dance, music and poetry.

⁴¹ Case C 47/2006 (ex N 648/2005)- France, Tax credit for the creation of video games.

3. Implementation of Article 21 of the Convention in the field of culture and development

The information collected through the consultations shows that the Parties have been promoting the Convention's objectives and principles in United Nations legal instruments concerning culture and development. Below are a few examples of observed outcomes from initiatives taken by Parties at all levels in this field, particularly with regard to institutional policy and changes in attitude and practice.

Since the Convention's adoption two United Nations General Assembly resolutions on culture and development in 2010 and 2011 have helped to move forward thinking on the potential of culture at both national and regional levels.⁴² Both resolutions directly tie in with one of the Convention's objectives: integrating culture in sustainable development policies at all levels. Paragraph 3 (d) of resolution 66/208 on "Culture and development" (2011), specifically invites States to "actively support the emergence of local markets for cultural goods and services and to facilitate the effective and licit access of such goods and services to international markets, taking into account the expanding range of cultural production and consumption and, for States parties to it, the provisions of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions".⁴³ These two resolutions are important for advancing the debate to ensure inclusion of culture on the United Nations post-2015 development agenda, and the Convention is central to this process. The events that followed bore witness to this.

After the passing of these two resolutions, a number of events were held in which the Convention played a role. For example, during the high-level thematic debate on culture and sustainable development at the United Nations General Assembly in June 2013,⁴⁴ representatives of intergovernmental organizations and of States represented at ministerial level cited the Convention during the debate, stressing its importance for economic development and the strength of the creative and cultural industries in this process. The Convention also featured in a ministerial meeting of the United Nations Economic and Social Council (ECOSOC) on "Science, technology and innovation, and the potential of culture, for promoting sustainable development and achieving the Millennium Development Goals", held in Geneva in July 2013. This event was important inasmuch as, for the first time in its history, ECOSOC included culture in one of the themes of its annual ministerial review. The report of the ECOSOC Secretary-General confirmed the Convention's importance for the theme of culture and development.⁴⁵

A number of high-level ministerial meetings have been held at regional level with the role of culture in development as their central theme. The Convention was again referenced in the declarations adopted at these events. For example, paragraph 2 of the Sofia Declaration (2012), adopted at a conference of Ministers of Culture of South-Eastern Europe, calls for strengthening of cultural policies and industries through implementation of the Convention.⁴⁶ At the Eastern Partnership's first ministerial conference on culture in Tbilisi (2013),⁴⁷ the ministers referred to the principles of the Convention in paragraph 1 of their declaration, particularly the link between culture and development, and undertook in paragraph 5 to continue the reform and modernization of their cultural policies and implement the Convention fully.

⁴² United Nations General Assembly, *Culture and development*, Res. 65/166, 69th plenary session, 20 December 2010; United Nations General Assembly, *Culture and development*, Res. 66/208, 66th session, 22 December 2011.

⁴³ See also paragraph 2 (d) of United Nations General Assembly Resolution 65/166 on "Culture and development" (2010).

⁴⁴ See <http://csonet.org/?page=view&nr=191&type=13&menu=14>

⁴⁵ Economic and Social Council, *Report of the Secretary-General on "Science, technology and innovation, and the potential of culture, for promoting sustainable development and achieving the Millennium Development Goals" for the 2013 Annual Ministerial Review*, Geneva, 1-26 July 2013.

⁴⁶ See paragraph 2 of the Sofia Declaration adopted at the Eighth Ministerial Conference on Cultural Heritage in South-East Europe, Sofia, Bulgaria, 24-25 October 2012.

⁴⁷ The Eastern Partnership includes the following countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

All these initiatives over the past two years have led to a clearer understanding and definition of culture's contribution to sustainable development, in which the creative and cultural industries have a significant role to play. If a United Nations conference reviewing culture's contribution to development were to be held, in order to develop a consolidated approach, there is no doubt that the Convention would feature as a significant tool, given the importance of the creative and cultural industries to the process.

4. Implementation of Article 21: initial assessment

Coordination between Parties in other international forums is vital for implementing the Convention, as are consultations between them at the regional level. Providing preliminary observations and findings on implementation of Article 21, this first report has identified results in the form of outputs and outcomes from the information and documents collected by the Secretariat following the consultations with the Parties in 2011 and 2012 and from information supplied in some of the Parties' quadrennial periodic reports. These results suggest that it is still too early to evaluate the impact of Article 21, which depends on long-term effects entailing major changes at institutional and governance levels.

The analysis shows that the effect of Parties efforts to implement Article 21 in the sphere of international cooperation have been the inclusion of the Convention's objectives and principles in cultural agreements and declarations (as outputs) and resulting in the implementation of new programmes and increased investment (as outcomes).

The results observed in the field of trade show that the Parties have used existing legal tools (cultural reservations and exemption clauses) and a new method (cultural protocols) in their bilateral trade relations; the latter could be described as an outcome since it implies a change of institutional policy. As for case-law, it is still in its infancy.

With regard to culture and development, outcomes are apparent from the initiatives taken by the Parties, whose commitments entail making the Convention a key element in the process of ensuring that culture is included in the post-2015 development agenda.

5. Future steps

At its fourth session in June 2013, the Conference of Parties charged the Committee with debating and analysing the information on implementation of Article 21. This first report by the Secretariat presents the preliminary results based on short- and medium-term observations and findings regarding implementation of Article 21 by the Parties. Evaluation of the Article's impact is a complex exercise that requires time and perspective and whose product will be the final link in the results chain.⁴⁸

In its efforts to promote the collection and exchange of information, data and best practice on the diversity of cultural expressions (Article 19), the Secretariat is developing a framework and carrying out a study on the impact of the cultural protocol signed between the EU and the CARIFORUM countries. Furthermore, UNESCO's Internal Oversight Service (IOS) is currently conducting an evaluation of the Convention and its impact on national legislation. The results of this evaluation should inform the Secretariat's work in this area.

Participation from all Parties and civil society on the follow-up to Article 21 is essential if the evaluation of its impact is to generate meaningful results. The evaluation should therefore be supported in order to ensure its quality and continuation, particularly through information-sharing and identification of good practices. Only then can the impact of the actions taken be properly evaluated.

⁴⁸ At the Committee's fifth ordinary session (5-9 December 2011), a number of Parties emphasized that it was difficult to assess the real impact of activities to implement Article 21 at that time and stressed that it was important to continue monitoring developments, given the relatively early stages of implementation of the 2005 Convention at the national level (CE/11/5.IGC/213/8REV2, p. 2).